

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

-against-

ROBERT J. MUELLER, DEEPROOT FUNDS
LLC (a/k/a dprt Funds, LLC), AND POLICY
SERVICES INC.,

Defendants,

-and-

DEEPROOT TECH LLC, DEEPROOT
PINBALL LLC, DEEPROOT STUDIOS LLC,
DEEPROOT SPORTS & ENTERTAINMENT
LLC, DEEPROOT RE 12621 SILICON DR LLC,
AND ROBERT J. MUELLER, JEFFREY L.
MUELLER, AND BELINDA G. BREEN, AS CO-
TRUSTEES OF THE MB HALE OHANA
REVOCABLE TRUST,

Relief Defendants.

Civil Action No.: 5:21-cv-785-XR

UNOPPOSED MOTION TO AMEND ORDER

TO THE HONORABLE COURT:

Defendant Robert J. Mueller (“**Mueller**”) files this Unopposed Motion to Amend Order, as follows:

1. On August 20, 2021, Plaintiff Securities and Exchange Commission (the “**SEC**”) filed its Complaint (ECF No. 1).
2. On September 23, 2021, the parties filed a Joint Motion for an Asset Freeze, Accounting, and Preliminary Injunction (ECF No. 6).

3. On the same day, the Court entered its Order Freezing Certain Assets, Ordering and Accounting, and Preliminary Injunction (ECF No. 7) (the “**Asset Freeze**”). The Asset Freeze noted that Mueller had represented that \$137,000 had been transferred from the account of the MB Hale Ohana Revocable Trust (the “**Ohana Trust**”) to Mueller’s counsel and that \$50,000 of such funds had been transferred to counsel representing certain Defendants/Relief Defendants in connection with a bankruptcy filing. *See* Asset Freeze at 4 n. 1. The Court ordered that the “remainder of the funds transferred from the Ohana Trust Account will be held in trust by Defendant Mueller’s counsel pending briefing and further order of the Court.” *Id.*

4. On November 5, 2021, the Court entered its Order Maintaining Freeze of Certain Assets and Allowing the Use of Limited Funds to Pay for Living Expenses and Criminal Defense Counsel (ECF 23) (the “**Order on Use of Funds**”). The Order on Use of Funds ordered that

Defendant Mueller shall be permitted, between the date of this Order and February 13, 2022, to use no more than \$20,000 of MB Hale Ohana Revocable Trust funds in defense counsel’s IOLTA Trust Account to pay for fees and expenses associated with criminal defense representation.

Order on Use of Funds at 4.

5. The Court later entered orders permitting Mueller to use up to \$20,000 of these funds to pay for fees and expenses associated with criminal defense representation after February 13, 2022. *See* Order Granting Unopposed Motion to Amend Orders and For Permission (ECF No. 56); Order Granting Second Unopposed Motion to Amend Order and for Permission (ECF No. 67).

6. Consistent with the Court’s orders, Mueller has used the \$20,000 identified by the Court to pay for fees and expenses associated with criminal defense representation. The remaining funds transferred from the Ohana Trust account—a total of \$67,000—remain in counsel’s trust account and frozen pursuant to the Court’s orders.

7. Mueller and the SEC assert claims to the funds currently held in counsel's trust fund, as detailed in pleadings filed in this action. The entity Defendants and certain Relief Defendants, by and through the bankruptcy trustee, Mr. J. Patrick Lowe, appointed in the case pending under Chapter 7 of the Bankruptcy Code titled *In re deeproot Capital Management LLC, et al.*, No. 21-51523 (Bankr. W.D. Tex. Jointly Admin.) (the "**Trustee**"), also assert claims to the funds currently held in counsel's trust and to the \$20,000 that the Court expressly permitted Mueller to use on criminal defense representation. The Trustee has made demand on Davis & Santos, P.L.L.C. to turn over the funds that were the subject of the Court's order to the bankruptcy estate pursuant to the provisions of 11 U.S.C. Section 550 as a subsequent transferee. Mueller and Davis & Santos, PLLC deny that the Trustee is entitled to any such relief.

8. Nevertheless, there are now competing claims to the funds from the SEC, the Trustee, and Mr. Mueller. Davis & Santos, P.L.L.C. disclaims and relinquishes any rights in the funds \$67,000 currently held in its IOLTA account and the \$20,000.00 that Mueller has agreed (as described below) to deposit into the Court's registry. With this agreement in hand, the Trustee has agreed not to pursue a Section 550 avoidance claim against Davis & Santos, P.L.L.C.

9. To preserve all parties' rights to assert claims to such funds, Mueller requests that the Court amend the Asset Freeze to permit Mueller's counsel to deposit \$87,000—including the \$67,000 currently held in counsel's trust account—into the Disputed Ownership Fund in the Court Registry System, or any other account identified by the Court or the Clerk of Court, pursuant to Federal Rule of Civil Procedure 67 and/or 28 U.S.C. § 1335.

10. The undersigned counsel for Mueller has conferred with counsel for the SEC and the Trustee. The Trustee agrees with the relief sought through this motion. The SEC takes no position on the motion.

Mueller therefore respectfully requests that the Court enter an order amending the Asset Freeze to permit Mueller's counsel to deposit a total of \$87,000, including the \$67,000 currently held in trust by Mueller's counsel pursuant to the Asset Freeze, into the Disputed Ownership Fund in the Court Registry System, or any other account identified by the Court or the Clerk of Court. Concurrent with this motion, Mueller is prepared to tender a cashier's check in that amount to any such registry account as directed by the Court. Mueller further requests any and all other relief to which he may be entitled.

Dated: December 7, 2022

Respectfully submitted,

DAVIS & SANTOS, PLLC

By: /s/ H. Jay Hulings
Jason M. Davis
State Bar No. 00793592
Email: jdavis@dslawpc.com
H. Jay Hulings
State Bar No. 24104573
Email: jhulings@dslawpc.com
719 S. Flores Street
San Antonio, Texas 78204
Tel: (210) 853-5882
Fax: (210) 200-8395

Counsel for Defendant Robert Mueller

CERTIFICATE OF CONFERENCE

I hereby certify that counsel for Mueller conferred with counsel for the SEC and for the Trustee. Counsel for the SEC indicated that the SEC would take no position on this Motion. Counsel for the Trustee indicated that the Trustee agreed with the relief sought in this Motion.

/s/ H. Jay Hulings
H. Jay Hulings

CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2022, the foregoing document was served on counsel of record via the Court's ECF system.

/s/ H. Jay Hulings
H. Jay Hulings